PARTY GROUPS IN HUNGARIAN PARLIAMENTARY LAW OVERVIEW OF REGULATIONS[1]

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1. Parliamentary law

Parliamentary law has been a part of Hungarian public law for a very long time, as a specific and clearly outlined portion of constitutional law.[2] A number of authors have ventured to offer specific descriptions.

József Barabási Kun (1907) first used the term 'parliamentary law,' which he divided into internal and external parliamentary law in a treatise on the subject. He wrote: "Parliamentary law includes all written and unwritten rules that define

a) the overall manner of legislation and authority of the houses;
b) the internal organization and operation of parliaments;
c) the relationship of the houses to one another as well as to all other bodies of government administration and to the people."

According to Barabási, parliamentary rules are part of point b). "However, this does not include the portions of parliamentary law found under the other two points for they make up external parliamentary law as opposed to internal parliamentary law which regulates the operations of inner parliamentary life."[3]

Kornél Pikler incorporated the concept of parliamentary law into a comparative study on Standing Orders in Western parliaments.[4] Looking at more recent studies, Zoltán Szente's *Bevezetés a parlamenti jogba* (An Introduction to Parliamentary Law) includes the term in its title. According to Szente, the narrower definition of parliamentary law, on which his book focuses, is "the totality of written law, unwritten law, common law, constitutional convention, and precedent which define the tasks and authorities of Parliament as a legislature, including convocation, termination, organization, operation, order of discipline, and the legal stature of its Members."[5] Márta Dezső's monograph *Képviselet és választás a parlamenti jogban* (Representation and Election in Parliamentary Law) declares that election law is an organic part of parliamentary law.[6] László

Trócsányi writes: "Parliamentary law is considered to be part of constitutional law in that regulations governing public administration, labour law and even financial law are also part of parliamentary law."[7]

Among public law specialists, the point of dispute is where to draw the boundaries of parliamentary law. In its narrowest context, parliamentary law is generally equated with Standing Orders, and in its broadest interpretation it is considered to include the complexity of legislative sources related to Parliament as such (including its jurisdiction, organization, operation, election, legal status of its Members, etc.) of which common law or legal custom is a part (such as Constitutional Court rulings related to Parliament, and laws on legal practices). The latter is clearly the full definition, and this complex approach from the aspect of law itself is important to the legal coherence of parliamentary law.[8] For instance, without knowledge of the inner logic of the election system it would be well neigh impossible to set the minimum number of MPs required to form a parliamentary group correctly. This became apparent in 1998, when the MIÉP party (Party of Hungarian Justice and Life) made it over the five-per-cent-of-the-vote threshold needed to enter Parliament, but did not meet the minimum requirement needed for a party group.[9] I agree with the complex definition and consider not only election law but, among other components, party law and parliamentary group law to be integral parts of parliamentary law.

2. Law of parliamentary groups

The law of parliamentary groups, consisting of the regulations governing the groups of political parties, one of the defining institutions of all parliaments, is a particularly fascinating and unique portion of parliamentary law. The picture is really exciting in historical perspective, with the gradual intensification of regulatory endeavours in the latter half of the 20th century. A comparative monograph issued by the Inter-Parliamentary Union in French in 1961 and in English in 1962 called attention to this trend, stating that we seem to be moving beyond the time when political groups were considered theoretically non-existent. Their importance to political life – together with the importance of the parties – is so great that by today they are impossible to ignore… Thus, we are witnessing the growth of cohesion and power within these groups.[10] Kornél Pikler drew a similar conclusion in 1971: "Development trends are clearly towards having parliaments regulate the status of party parliamentary groups in conformity with their true significance, eliminating common law with written regulation to bring them up to the level of contemporary constitutional life."[11]

Prior to the regulatory "offensive" there even were opinions to the effect that party groups had no place in Parliament at all, since each and every Member represented the entire nation. We still rather often come across the idea suggesting that parties and their parliamentary groups operate outside of constitutional life so the law really should not be concerned with them.[12] This type of reservation is particularly typical of the parliamentary law of the United Kingdom, where the boundary between the parliamentary group and the political party is indistinct. Common law, self-regulation, and political norms (such as party charters and parliamentary group rules) play a major role in regulating the party groups, even in modern parliamentary systems.

From the aspect of regulation, the party parliamentary group is a dual entity. On the one hand, it is regulated by political norms as a party group, meaning that it does not really fit in with parliamentary law, while on the other it is a type of organization specific to Parliament with numerous authorities conferred on it by parliamentary law. To complicate matters still further, many of the norms in the regulatory system are set somewhere between the two entities for in actual fact parliamentary group rules are similar to Standing Orders in many ways.

The rules governing the parliamentary groups are generally rooted in one of three legal sources:

- rarely on constitutional level,
- more often in Standing Orders,
- party group rules are also a specific source of law.

These basic legal sources are complemented by pseudo-norms, laws governing the implementation of the law, and common law.

As far as the regulation of parliamentary group law is concerned, there are two possible extremes: "either the law ignores the existence of political parties and their parliamentary groups or it regulates their operation down to the minutest detail. Clearly, there are also plenty of options in the middle. In practice, all the European parliamentary democracies more or less regulate parliamentary group operation through laws but they are not excessively detailed or rigid in doing so. Thus, they allow practice and custom as well as internal party rules to operate. Regulations governing the parliamentary groups may not under any circumstance limit MP freedom in taking political positions, and any such regulation – even if it were not part of a written Constitution – would conflict with the basic principles of the parliamentary system."[13]

3. Parliamentary groups in the Constitution

Let us take a look at the first and by far the most prestigious level of regulation, the Constitution. Is there really a need to regulate parliamentary groups on constitutional level? I believe there is. Party groups are highly important parliamentary bodies. In 1971, Kornél Pikler was right on target when he wrote: "In their current form the parliamentary groups are rather recent. For instance, French parliamentary law has only recognized their existence since 1910. However, ever since the turn of the [20th] century, the party groups have been increasingly shaping the parliamentary nervous system, initially behind the scenes and later openly. Today they are called decisive factors of the course of parliamentary operations as specified by Standing Orders, just as they play a decisive role in rationalizing parliamentary work."[14]

More recently drafted constitutions (such as the Bulgarian, Estonian, Greek, Portuguese, Romanian or Turkish ones) are more sensitive to the party groups although many of them contain but tangential regulation. The Portuguese Constitution could serve as a model, for it declares the principle of the freedom to establish parliamentary groups, sets down the most important rights of such groups (such as the right to initiate legislation, to initiate the establishment of investigating committees, etc.), guarantees their infrastructure and also deals with the independent MPs who are not part of any group.[15]

Regulation on constitutional level can lead to a positive outcome to a nearly century-long debate on whether the party parliamentary group is a party body or a constitutional institution. Based on the principle of the freedom of mandates, the question can only be answered in the negative, for the reasoning is that a parliamentary group can under no circumstances be considered a party component. The UK parliamentary model, where the party groups behave as parties, is atypical in modern parliaments. Parliamentary groups are established by voluntary groupings of elected Members of Parliament, not party decision, and parties or party bodies cannot give them orders.

The freedom of a mandate is the classic basic principle of the true parliamentary system. "What, then, is the unrestricted mandate? It is not a 'historical relic' but a constitutional principle and rule which, in a form rationalized by parliamentary law, contributes to 'the rule of law not becoming the rule of legislators'."[16] The Hungarian Constitution also sets down the principle of unrestricted mandates by declaring that Members of Parliament conduct their activity in the public interest. The Constitutional Court has interpreted the essential content of the principle of the unrestricted mandate in numerous rulings that covered both voters and political parties. "The same freedom is also valid for the MP with respect to the political party that nominated him or her to the post.

The legitimacy of an MP is bound to his or her election, not to the party. A party may not employ legal means to coerce an MP to support a party position. The status as a Member of Parliament of an MP who resigns or is expelled from a political party is maintained in full. An elected MP may participate in the work of a party parliamentary group as a part of exercising his or her unrestricted mandate."[17]

According to a basic tenet of the Constitutional Court, the establishment of parliamentary political groups "is really the exercise of the unrestricted mandate." This principle of constitutional law, therefore, separates the parliamentary groups from the parties, for it essentially places the parliamentary groups within the fortifications of the Constitution.

The majority of scholars of public law include the parliamentary groups among the constitutional institutions and not the party organs. László Sólyom writes: "Political parties have a presence in Parliament through their party groups. The party group is an organ of Parliament, not of the party, established at the time the Parliament is first convened and founded directly on electoral legitimacy in that the votes were given to the political parties … the parliamentary group is a separate power factor with bargaining power and not simply a party executive body placed within the government administration.[18] Márta Dezső wrote that "legally speaking, the parliamentary group is a parliamentary body and not a part of the party whose members make up the group … A party may not legally give orders to its own parliamentary group, so it must choose other means to influence it. A party parliamentary group is really two different groups, a party group and a parliamentary group, even though it consists of the same people in both capacities."[19]

On the basis of all of the above, my response to the question is that the party parliamentary group is a constitutional institution. That is the conclusion derived from its historical development, from the enhanced level of regulation, from Constitutional Court interpretations, and last but not least, from the constitutional significance of the institution, which has become its "nervous system," acting as the foundation for modern parliamentary operations.

4. Party parliamentary groups in the Hungarian Constitution

How does the Hungarian Constitution stand regarding party parliamentary groups? The first time in Hungarian constitutional history that party parliamentary groups were regulated was in Act XXXI of 1989, which regulated them functionally and, let us add, a bit erratically, to meet the ideas of that period. Under Article 19/B (2) of the Constitution, the heads of the parliamentary

groups of the parties with representation in Parliament as well as a delegate of the Members of Parliament who are not members of any party are to be included in the National Defence Council which is to operate during states of emergency. Under Article 28 (5), before dissolving Parliament, the President of the Republic is required to listen to the opinions of the heads of the parliamentary groups of the political parties represented in Parliament as well as of a delegate of the Members of Parliament, which are not affiliated with any party. Act XL of 1990 deleted the phrase on Members of Parliament that are not affiliated with any party from the Constitution. This same law added a point to the Constitution stating that a nominations committee consisting of one member from each of the political parties represented in Parliament will nominate the members of the Constitutional Court. These laws are included in the current Hungarian Constitution. But all three deserve sharp criticism *de lege ferenda*, although there were historical reasons for including each of them.

The original argument for Article 19/B (2) was that the National Defence Council must include representatives of all institutions authorized to voice the national will. The question, when viewed from the perspective of the present, is whether this solution meets the other important consideration of a state of emergency, which is the principle of effective function, a guiding principle of the constitutional amendments that followed the country's joining NATO.

Another questionable issue is that if the objective constitutional criteria for dissolving the Parliament exist, is there any need for a basically formal restriction to the right to declare the dissolution, which just calls for reconsideration. A prior opinion is just a procedural tool and does not bind the President as far as content is concerned. It is also true that there are cases, albeit rare ones, of similar restrictions in some constitutions.[20] At this point, however, I think it is a matter of over-regulation, and allowing politics too much scope in public law is not always fortunate. I do not want to discuss the manner of nominating Constitutional Court justices here since professional literature has already dealt with the matter at length.

Parliamentary resolution 119/1996 (21 December) on the principles regulating the new Constitution of the Republic of Hungary takes a position in favour of constitutional level regulation of the parliamentary groups. This resolution declares that there is a need to briefly regulate the institution of party parliamentary groups as well as the most important rules of parliamentary minorities, and opposition groups. The draft, prepared by the Secretariat of Parliament's Constitution Preparation Committee, envisaged the regulation of the parliamentary groups within the title of "The Organization of Parliament." "Members of Parliament from the same political party may establish groups of Members of Parliament (hereinafter: party parliamentary groups) to coordinate their

activity in Parliament."[21] The party parliamentary groups are repeatedly mentioned in the draft, such as in the discussion of the committee system, the National Defence Council, the dissolution of Parliament and the committee nominating Constitutional Court Justices, where the groups are cited in the currently valid Constitution.

Several Hungarian specialists in public law have also called for regulation of the party parliamentary groups within the Constitution. András Bragyova wrote: "As far as the party parliamentary groups are concerned, the Constitution should declare that the parliamentary faction (group) is a body of Parliament and not of the political party whose policies it supports; it also should be stated that a Member of Parliament may belong to only one group at any one time. MPs shall be expressly guaranteed the right to resign from a group – this is the direct consequence of the unrestricted mandate – and the parliamentary group should also have the right to expel an MP from its ranks. In addition, it would not be a waste of time to establish a *tempus vetitum* with respect to transferring from one parliamentary group to another."[22] In this proposal we already see the appearance of a very important element of the public law definition of party parliamentary group, namely that the party group is a body made up in the image of Parliament. The party parliamentary group can of course be defined and described in a variety of ways. There have been multiple attempts to do so, particularly in political science studies.[23] Staying with the public law approach, Krisztián Gáva wrote: "The parliamentary group is an independent (working) organization within the Parliament – which even may have legal entity – established voluntarily by Members of Parliament, which is more or less separate from the political party of the PMs. These groups exist in most European parliaments."[24] Constitutional Court rulings will also promote future fuller Constitution-level regulation of the parliamentary groups. The main conclusions of the Constitutional Court regarding the parliamentary groups are as follows:

- the parliamentary groups are constitutional,
- provisions of the Constitution assume that they exist and operate,
- establishing them is a requirement of the Constitution,
- organized action by the parliamentary groups within Parliament is a fundament of parliamentary operation.

The Constitutional Court cannot take on the job of defining the concept of the party parliamentary group, but it has outlined the boundaries of the definition. "The definition of the institution of party parliamentary group must serve to make parliamentary operations effective and stable, considering the tasks the parties face in a modern representative democracy. The party parliamentary groups are tools for shaping political opinion and for unified support of their

opinion. Through their work, the parties can effectively do their constitutional job of relaying the will of the people. The party parliamentary groups are essential to the structuring of parliamentary debate. They make it possible to present and contrast several polished positions as opposed to several hundred sporadic individual opinions. The effectiveness thus attainable is served by the authorities granted not to the various MPs but expressly to the parliamentary groups (which represent the MPs)."[25]

How might the party parliamentary groups be regulated within the Constitution? I believe it might be done as follows: "The organized activity within Parliament of the political parties participating in shaping and declaring the will of the people is the foundation of parliamentary operations. Members of Parliament who belong to the same party may join based on their unrestricted mandates and establish parliamentary groups to coordinate their activity within Parliament. The establishment of parliamentary groups is a requirement of the Constitution. The groups of Members of Parliament are the work organizations of Parliament."

5. The legal nature of Standing Orders

Standing Orders are the traditional, highly significant and specific sources of parliamentary law, containing detailed regulations on parliamentary convocation, organization, and order of debate, and last but not least, on the rights of Members and parliamentary groups. The legal nature must be touched on to determine whether the party parliamentary groups are truly regulated by law. The fact is that Standing Orders are the supreme sources of parliamentary group law. The extent to which Standing Orders are sourced in law and their legal nature have been the subjects of debate for a very long time. Contemporary Hungarian statutory law and the Constitutional Court practice based on it treat Standing Orders as a miscellaneous legal tool of state management. In this interpretation the Standing Orders do not qualify as law.[26]

Many scholars dispute this degree of "degrading" of Standing Orders as a source of law, including the author of this article. This concept of Standing Orders is a break from a concept of Hungarian public law that has existed since Act IV of 1848, which specifically set Standing Orders as law, a specific source of law which did not even have to be shown to the monarch as did legislative acts, because there was autonomy in the passing of Standing Orders.[27] In a study on state law published in 1916, László Buza wrote: "In treatises on Hungarian public law, everyone considers Standing Orders to be law, with the binding force of law. Without exception, our public law textbooks state that Standing Orders are sources of law and they treat them as such … Without

exception, our statesmen and politicians are of this view."[28] When presenting the major models of Western European Standing Orders as sources of law, in 1971 Kornél Pikler concluded that the dominant theory generally placed Standing Orders ahead of ordinary law."[29] Sándor Pesti used the content specifics of Standing Orders and the subjects they regulate as his point of departure when he recommended that "it would be best if they were defined as *sui generis* legal norms in their own right that cannot be placed in any category."[30]

I agree that when defining the legal nature of the Standing Orders, the fundamental point of departure should be their relationship to the Constitution.[31] Following the French model, Article 24 (4) of the Hungarian Constitution authorizes the Parliament to establish this specific source of law and to require a two-thirds majority of the Members of Parliament present to establish these norms. However, I recognize that the Constitution does not specify that the Standing Orders qualify as law or other rule of legal stature. Choice of the form is a part of parliamentary autonomy. The Parliament acted according to its own tradition in adopting the Standing Orders of the Parliament of the Republic of Hungary with a decision, 46/1994 (30 November). However, denial of the legal nature of Standing Orders is not the logical conclusion of the forgetfulness in setting the rules.

Although I cannot dispute the fact that in general it is difficult to define an extraordinarily specific source of law, the legal nature of the Standing Orders and their significance to the study of legal sources as well as their close connection to the Constitution (Standing Orders are the immediate executor of many stipulations of the Constitution!), the consensus requirement for adopting them set in the Constitution, their mandatory nature, and the norms they contain, raise them above ordinary law in my view. The jurisdiction of Standing Orders goes far beyond Members of Parliament and Parliament's own organization such as the party parliamentary groups, for they also have a direct effect on other organizations and even on the citizens. For evidence, we need only think of the activity of the investigations committees.[32] The question is that if Standing Orders are placed above ordinary law, must they definitely be adopted as legislation such as several public law scholars have recommended and as contained in the draft of the new Constitution.[33]

I believe that the constitutional authority may, in the future, issue legislative authorizations using the term "Standing Orders." The place where this specific type of law belongs in the legal system is close to the Constitution and above ordinary law. Given the autonomy of the House of Parliament, the President of the Republic should have the authority to employ a constitutional veto against Standing Orders but not to impose a political veto. This constitutional position is what "Parliament's Constitution" deserves.

6. The parliamentary groups of parties in the Standing Orders

There are two major and increasingly robust areas of regulation in the Standing Orders that cover party parliamentary groups:[34]

- the first concerns the establishment of parliamentary groups (less often, the termination of them), movement from one parliamentary group to another, rules of resignation and expulsion, and the status of independents in this particular context. Standing Orders generally regulate these issues in a single chapter and in a coherent manner.
- the second is a cataloguing of the rights of parliamentary groups, generally as functional regulations connected to the various parliamentary institutions (such as taking the floor before the house proceeds with its agenda, initiating legislation, etc.).

Modern Standing Orders definitely centre on the party political groups and not on the rights of individual MPs. Nevertheless, there is significant scope open to classic MP rights that are specified in the Constitution (such as the right to initiate legislation and the right to ask questions). In 1994 this debate was resolved in a comparatively balanced manner in Hungary when the new Standing Orders were adopted and clearly supported the rights of parliamentary groups.[35] Also typical of Standing Orders is the way they legally distinguish between the two subtypes of party parliamentary group, the government groups and the opposition groups, and guarantee opposition rights.

As far as the former major regulatory sphere is concerned, this paper has already noted that the formation of party parliamentary groups is based on the right of MPs to join forces and on the principle of the unrestricted mandate. However, the freedom to form party parliamentary groups is not unlimited and all of parliamentary law sets numerous restrictions. Comparative studies on constitutional law that deal with parliamentary law have pinpointed the extraordinarily varied restrictions in specific national laws, often intended to manage local concerns, as follows:[36]

- identical political positions are required to form groups – group formation is the right of MPs who are in the same party,
- each party may have only one parliamentary group, an MP may belong to only one group, no one may be forced to choose a parliamentary group, an MP does not necessarily have to be a member of a party to join its group,
- it is considered generally desirable to set the minimum number of MPs required to form a party group,

- in contrast with party pluralism, groups (based on regions, professions or other common factor) may not be formed or if they are allowed they are limited and require approval – where they exist, these groups are different in status from party parliamentary groups,
- the unrestricted mandate gives MPs the right to resign from a party parliamentary group, while parliamentary group autonomy gives the group the right to expel a Member,
- parliamentary law does not try to restrict the freedom to resign but it does raise obstacles to shifting to another group, to "changing battle dress" by introducing a cooling off or waiting period, thus protecting the choice made by the voter on election day,
- there are several models for independents, the two extremes of which are recognition of each as an independent group and complete denial of independent group formation. Generally, a mixed solution which tolerates their rights including group rights is typical.

This paper will only touch on the latter regulatory issue, the rights of parliamentary groups. The rights of parliamentary groups are collective rights and it is assumed that the heads of the groups and their deputies, specifically included in many portions of parliamentary law, are acting in the name of their parliamentary group.

Parliamentary law regulates the rights of party parliamentary groups according to four basic principles: dominant order, proportionality, parity, and equality of party parliamentary groups. Where do we see the most exercise of parliamentary group rights?

- First of all, they are the "initial movers" of Parliament, the institutional participants in setting the agenda and preparing parliamentary schedules and working order, generally on the basis of the principle of the equality of parliamentary groups,
- the parliamentary groups submit proposals nominating parliamentary officers based on dominant order, on the distribution of committee seats generally based on the proportionality principle but sometimes on parity,
- their rights can be typified along the lines of the main functions of Parliament, first of all in shaping legislation (such as in initiating legislation or amendment proposals) and in direct political functioning spheres (such as initiating political debate and taking the floor before debate begins on the day's agenda),
- there are also procedural parliamentary group rights linked to the order of debate (such as cloture/closure, initiating open balloting by roll-call, etc.).

The catalogue of rights that the various party parliamentary groups may access independently tells us much about the law governing the given Parliament. It is generally known that Standing Orders generally set a comparatively low minimum number of persons required to form a party parliamentary group. The actual numbers can be used to evaluate the various rights to take initiatives and to participate, ranging from the rights of an individual mandate through the rights of party parliamentary groups on to the institutions that call for larger proportions. For instance, it is a matter for consideration whether initiating a vote of no confidence is the right of a parliamentary group (see Portuguese Constitution) or whether a larger number of MPs are required (such as one-fourth or one-fifth of the Members) to make the initiative. In other words, are the rights regulated as opposition rights that can be exercised in the specific institutions irrespectively of the will of the majority? The answer always depends on the political spectrum and party system of the given country.

7. Party parliamentary groups in Hungarian Standing Orders

Let us now focus on the domestic scene and see how Hungarian "internal" parliamentary law regulates the party parliamentary groups. The rights of parliamentary groups were established in the constitutional regime change of 1989/90. The first legislation to be adopted to this effect was Parliamentary Resolution 8/1989 (8 June) on Amending the Standing Orders of Parliament and Amendments of the Standing Orders.

According to Article 16 of the 1989 Standing Orders, Members of Parliament representing political parties and MPs who did not belong to any party were permitted to establish parliamentary groups to coordinate their activity as Members. Ten MPs were required to establish a parliamentary group. The Standing Orders also allowed groups not based on party pluralism to form.[37] When a party-based parliamentary group was formed, the fact, the name of the group and the names of the chair and members had to be reported to the Speaker. In essence, the 1994 Standing Orders, which continue to be valid, have maintained this system of regulation with the difference that the independents were dropped out of the list of persons who can form party groups, the terminology which said "parties with representatives in Parliament" was changed, and the minimum number of persons required to form a party parliamentary group was raised from ten to fifteen.

Having a representation in Parliament, which, under the electoral system, might be a single MP, does not necessarily include the right to form a party parliamentary group, said the Constitutional Court. The Constitutional Court annulled the rule requiring a fifteen-person minimum to establish a parliamentary

group as of June 2, 1998 – a number that is still valid for terminating a parliamentary group under current Standing Orders. According to the ruling, the requirement for fifteen persons is not of itself unconstitutional, but it becomes so when it contradicts the electoral system. Parliament may regulate the number of persons needed to establish a parliamentary group in several ways.[38] In fact, to this day Parliament has been unable to agree on a minimum number of MPs allowed to form a Parliament group that would be in conformity with the electoral system. This is a major shortcoming of Hungarian parliamentary law, even though the Constitutional Court ruling did not include a concrete deadline for augmenting the Standing Orders.

I believe it would be expedient to declare that any party managing to exceed the five-percent-of-the-vote threshold needed to enter Parliament also had the right to form a parliamentary group. In all probability, the five-percent rule means a minimum of 8-10 seats. In other words, since 1998, there is no minimum requirement to form a parliamentary group in Hungarian parliamentary law. In other words, in principle even one or two MPs could form such a group. That is not unprecedented in parliamentary law. For instance, the upper house of the Australian Parliament adopted a ruling under which a single senator may form a separate group,[39] and groups of 2-5 persons also exist. At the same time, Hungarian parliamentary practice rejects "frivolous" initiatives.[40]

The 1994 Standing Orders contained a separate chapter that regulated the parliamentary groups in detail, using the principles we see in European Standing Orders. In other words:

- the sole basis for forming a parliamentary group is party pluralism, and no other groups of MPs qualify as parliamentary groups insofar as the Standing Orders are concerned,[41]
- one party may have only one parliamentary group, and while an MP does not necessarily have to be a party member to join its group, he or she may not hold membership in more than one group,
- an MP may resign from a parliamentary group, after which he or she becomes an independent. He or she may join another parliamentary group after a six month interim period,
- the Standing Orders contain regulations on the internal organization and operation of the parliamentary groups. For instance, the group chooses its parliamentary group leader and deputy leader from among its members, the parliamentary group may dissolve itself, may expel a Member, and may agree to allow an independent MP to join it,
- the Standing Orders contain guarantees regarding the financial operations of the group of MPs. Act LXVI of 1990 on the honoraria, cost coverage, and benefits of Members of Parliament sets the rules governing the infrastructure.

The group is required to submit a written report of events and factors related to the parliamentary group (establishment, termination, name, list of officials, list of Members) to the Senior Member of Parliament at the convening session of Parliament following the oath of office, or to the Speaker of Parliament if they occur while Parliament is in session. The autonomy of the parliamentary group is manifest in the fact that the Speaker cannot reverse a decision. He or she may only examine it for conformity with the Standing Orders (for instance, did the report truly come from the head of the parliamentary group and was it submitted in writing?).[42]

I have already indicated that in this study I will not look into the details of the second large area of regulation, the catalogue of parliamentary group rights – a matter extensively discussed by several authors. At the same time, I would like to note that it would be expedient to reconsider *de lege ferenda* the institution of parliamentary group rights in the various bodies. This reconsideration is important because the Standing Orders have very correctly regulated the details of parliamentary group rights. Of the 148 paragraphs of Standing Orders that continue to be valid (actually 170 paragraphs in all), nearly 40 are concerned with the rights of groups. In other words, one in every four focuses on the groups. In some cases the Standing Orders relegate direct rights to the party parliamentary groups (such as the right to call for an open roll-call ballot or to initiate a parliamentary decision on the interpretation of a Standing Orders), while in others it speaks of "at least fifteen MPs" (for instance, when setting its agenda, when concluding a debate, and so on.). The opportunity for any MP to submit an initiative (for instance, for a closed session) should be reconsidered as should the requirement for larger minimum numbers of MPs, such as the rule of one-fifth (to initiate a special session, to establish an investigations commission, to conduct a political debate, to postpone a meeting of Parliament) from the point of view of parliamentary group rights. The four principles of the Standing Orders: order of dominance, proportionality, parity, and the equality of the parliamentary groups should be vetted against each other.

Where do we see truly characteristic rights for parliamentary groups within parliamentary law? We see them where the legal regulation is based on the equality of the groups. Such areas include participation in the House Committee, which can be convened by any parliamentary group (Standing Orders Articles 24 and 26), speaking off the agenda (Standing Orders Article 51), submitting a bill for debate (Standing Orders Article 98), reviving a draft amendment (Standing Orders Article 106) interpreting Standing Orders (Standing Orders Article 143) and so on.

8. The parliamentary groups in Hungarian parliamentary practice

The following table contains the parliamentary groups in the four terms of Parliament we have seen since the constitutional regime change of 1989/90. Column one in the table contains the numbers of people in the parliamentary groups announced on the date of the convening session of Parliament. Column two gives us the numbers at the end of the term, which indicates restratification, the appearance of new party groups (MIÉP, MDNP) the possible disbanding of parliamentary groups (KDNP), and the appearance of independents.

Parliamentary groups in Hungary's parliaments, 1990-2006 [43]

5/2/1990 to	3/25/1994	6/28/1994 to	3/17/1998	6/18/1998 to	2/26/2002	5/15/2002. to	12/13/2005
MDF		**MSZP**		**FIDESZ**		**MSZP**	
165	136	209	204	148	143	178	178
SZDSZ		SZDSZ		MSZP		FIDESZ	
94	83	70	66	134	136	164	168
FKgP		MDF		**FKgP**		MDF	
44	36	38	20	48	33	24	8
MSZP		FKgP		SZDSZ		**SZDSZ**	
33	33	26	22	24	24	20	20
FIDESZ		KDNP		**MDF**			
22	26	22	–	17	16		
KDNP		FIDESZ		MIÉP			
21	23	20	32	14	12		
Independents 7	28	Independents 1	23	Independents 1	20	Independents 0	12
FKgP MPs operating outside the group	9						
MIÉP	12	MDNP –	15				
Összesen							
386	**386**	**386**	**382**	**386**	**384**	**386**	**386**

Now, I would like to briefly outline four issues based on parliamentary case law. They are the question of establishing a parliamentary group in the midst of a term of Parliament, the problems related to terminating a parliamentary group, movement from one group to another involving both resignations and transfers, and finally, the matter of the independents.

9. New parliamentary groups in mid-term

If we look at the table, we will see that two parliamentary groups were established in mid-term in conformity with Standing Orders, although these were not the only ones initiated. [44] In the middle of the first term of Parliament, the MIÉP party group (at that time just called the MI [Hungarian Justice] Party group) announced its formation at the July 1, 1993 session of Parliament but was only able to begin operations *de jure* on September 1, after the party had been registered by the court.[45] In the second term, 17 MPs announced the foundation of the MDNP parliamentary group to the Speaker in a document dated March 11, 1996. The responsible committees and the Parliament itself found that the group was in conformity with the rules, interpreting them to the effect that the six month waiting period was not valid for "collective resignations."[46]

What are the problems of principle raised by the establishment of a parliamentary group in the midst of a term? This also means that parties other than ones that ran in parliamentary elections and won their place in Parliament could form groups but so could any group of MPs breaking off from one party and forming another in the interim. Obviously, the unrestricted mandate would come up against a hard and unconstitutional barrier if the only parties allowed to form parliamentary groups were those already in existence at the time of the elections.[47] That is the view expressed by the Constitutional Court interpretation. "… If parties split and new ones are formed during the term of Parliament, and if the Members of Parliament choose to represent these new parties which did not originally exist at the time of the elections, the legitimacy of these parties in Parliament is derived not directly from the will of the electorate but from the legitimacy of the Members of Parliament."[48] The Standing Orders to the contrary, which prohibited this from 1995 to 1998 and occurred in Standing Orders drafts dated earlier than 1994, would no doubt be considered unconstitutional.[49]

I cannot fully agree with an interpretation giving the unrestricted mandate full value while considering the order of parliamentary seating determined by elections to be completely irrelevant. Parliamentary law must protect the result of an election that expresses the sovereign will of the electorate. A Parliament that allows its seating order to become significantly different from the one established at its initial session does not conform to this principle.

We see that parliamentary groups can be formed in the midst of a parliamentary term. However, this is an atypical group (because it was not declared at the convening session of Parliament and because the electorate did not vote for this party or its platform). Therefore a separate permit or approval from Parliament

should be required, something that is true for other types of groups. Above and beyond requiring the court to register the party, it must also have a minimum number of MPs as set in the Standing Orders (or at least the number which would correspond to the minimum 5 percent of the vote needed to enter Parliament in the first place).

10. Terminating a parliamentary group

According to effective Standing Orders, a parliamentary group shall be terminated if the number of members in it drops below fifteen or if the group dissolves itself. The first case is an objective cause for termination and the second is a subjective one. A small parliamentary group may be terminated by the objective rule. Given the objective operation of the mixed election system employed by Hungary, smaller groups generally come about from party lists as opposed to individual constituencies, with most mandates coming from the national lists. For this reason, Standing Orders Article 17 (3) states that a mandate acquired from a list is not terminated, even if vacated, and is to be refilled from the list.[50]

Constitutional Court ruling 27/1998 (16 June) only annulled the minimum number requirement with respect to establishing a group for it did not offer any real guidelines concerning group termination. Until Parliament sets a minimum number requirement for establishing a group, the number of MP members declared at the founding session becomes the minimum. The question then is, whether that is automatically true for group termination?

Standing Orders Article 17 (3) does not really appear to exist in parliamentary law. Dropping below fifteen persons has not affected the status of party parliamentary groups that were founded in conformity with the rules.[51] The only MP group that was terminated in conformity with the rules was the party parliamentary group of the KDNP party, whose membership dropped below 15 persons as a result of expulsions and resignations.[52] Termination of a party parliamentary group has numerous legal repercussions including loss of the rights of a party parliamentary group. For instance, the group loses its officials and committee slots, and its status in the House Committee. The statuses of the members of the KDNP party parliamentary group were lost in three different ways: through expulsion, resignation, and through termination of the group itself. The Standing Orders do not cover the latter case, when termination of the party parliamentary group turns the MPs into independents. Here we need to ask whether the six-month cooling off period has to be maintained in this case, too, or can an MP immediately join another party parliamentary group. Under a decision taken by the Constitution and Justice Committee, MPs who became

independent for reasons other than resignation and expulsion may become members of another group without the six-month waiting period. Parliament approved this interpretation.[53]

Another interesting precedent with respect to termination is whether the original party parliamentary group declared at the opening session of Parliament is qualified as having been retained if the party itself walks out on the MPs.[54] In other words, can a group without a party to back it up be considered a party parliamentary group of the given party. The Constitutional and Justice Committee has taken a position that a party may have only one parliamentary group. This conclusion is laudable and in conformity with the Standing Orders. However, the argument that the personal composition of the party parliamentary group "does not have a re-shaping effect under public law" is questionable if the fact is that the party behind the parliamentary group has become completely rearranged.[55] Obviously, the party parliamentary groups are established and terminated apart from the parties themselves, but the basic principle is that the grouping is based on party pluralism. This matter would also need more precise regulation in the Standing Orders.

I believe that group termination should be regulated differently from group formation with more focus on concrete factors. An automatic adherence to a minimum number is not a good rule. There can be numerous reasons why a group that numbers 10-15 MPs at the start of Parliament may lose members (such as death or resignation from Parliament). That does not negate Election Day will, which found the parliamentary group to have been established by the rules. I think some affirmative action rule might be imposed, such as one saying that a group shall only be terminated if its membership declines to less than three-quarters of the declared minimum for group formation.

11. Changes in seating order [56]

Parliament's seating order was established to show the party parliamentary groups and through them, the political differences that evolve through social change. The seating order of the convening sessions faithfully reflects the results of the changes. The same is not true for the seating order of the same parliaments by the time their term of office ends. There is regrouping and movement within Parliament even in countries with stable multi-party systems. There are two forms of change in seating orders. One is the "fluctuation" when an MP mandate is terminated, and the other is when a party parliamentary group reorganizes because of resignations or expulsions from the group that do not affect the parliamentary mandate.

Given the mixed electoral system in Hungary, fluctuation can change the political map within Parliament for there are 176 individual consistencies in which by-elections may need to be held, and the winner of these seats is never certain. If a seat filled through regional or national lists is vacated, the party that held it will simply appoint a new MP. The internal movement of party parliamentary groups can bring about changes that significantly affect Parliament's balance of power. Parliamentary law, including Hungary's Standing Orders, tolerates this movement, for the principle of the unrestricted mandate includes the freedom to resign from a party group and move to another one. In turn the principle of the autonomy of the party parliamentary groups allows groups to expel Members and accept new ones who apply to join. (Standing Orders Article 14 and 15.) The constitutional principle of the unrestricted mandate also means that resignation or expulsion does not terminate the mandate. Instead, the MP becomes an independent.

One form of binding an MP to the party and its parliamentary group that is known and used involves having the MP sign a loyalty declaration when nominated or a statement of resignation from office that is undated. An MP who retracted the declaration of resignation dated after the fact and delivered to the Speaker by the leader of the party parliamentary group set a precedent. Parliament ruled that the Member's mandate was not terminated, based on the principle of the unrestricted mandate. The lesson of the case was that any private law contract between the party and the Member that infringes on the unrestricted mandate is invalid.[57] In other words, public law and politics approach resignations and shifts from one party group to another from fundamentally different points of view, which they also dispute on moral grounds. Movement within Parliament, losses of mandates, and the winning of mandates always receive significant echo in the media. This means that an MP who quits one party parliamentary group and joins another (the "person who changes his or her colours," the "defector," the "deserter") violates the internal norms of the political parties and possibly also political norms, but not parliamentary law. Often the shift is expected. When certain MPs take stands in Parliament, sometimes it is quite clear that their positions do not conform to that of their party, and they often vote in opposition to their party, thus violating the rules of their parliamentary group. Often an MP resigns from a group to stay a step ahead of expulsion.

There is a high level of freedom to resign from a group and join a different one in Hungarian parliamentary law. In fact, there is but one restriction, the six-month cooling off period when the MP marks time as an independent. This restriction was further relaxed by Standing Orders interpretations already cited, to the effect that when MPs become independent after collectively leaving a party parliamentary group or after the group is terminated, they do not have to

wait for six months. Collectively resigning from a party parliamentary group is possible, thanks to the unrestricted mandate, but recognizing it without hesitation can violate election day will based on the sovereignty of the people, even if the electorate agrees with the group tendering the resignation from the party group as opposed to a party parliamentary group or party itself that has not kept its election promises. The logical outcome of this substantial legal freedom (for there can be numerous other social, political or personal reasons to resign and transfer to another group) is that movement from one party parliamentary group to another within the Hungarian Parliament is quite significant (see table).[58] (For instance, in the 1990-1994 term – if we include fluctuation – 21 percent of the Parliament had switched from its original seating order to another location by the end of the term.)

Should we or can we limit the freedom to resign and switch groups? I believe so, for this freedom is not unlimited. It is appropriate to use refined legal means to protect the results of an election and the composition of a Parliament. These protective tools include maintenance of the structure of a Parliament once it has been formed, retention of government stability, and avoidance of government crises.

With respect to the practice of resigning from one party parliamentary group and switching to another, I would like to mention three areas that should be restricted. These limits are an attempt to govern how many times an MP may switch. For instance, should a party parliamentary group have authority to admit an MP who is switching allegiances for a third time, in other words, a person who has been a member of every single party group serving in the given Parliament? (In 1994-1998, thirteen MPs switched groups twice and two switched three times.) If the Standing Orders are interpreted in the strict sense of the term, that should not be possible. Under Standing Orders Article 14. the main rule of a party parliamentary group is that it is made up of MPs who are members of the same party. An MP is considered to belong to a party of which he or she is a member or which supported him or her when he or she was running for election, and finally – in my view this rule is the exception – an MP who is independent or has become independent and is then accepted by a party parliamentary group. The latter – in my interpretation – is valid for an MP who was originally an independent and for an MP who resigned or was expelled from a party parliamentary group a single time. Accepting the interpretation that allows extensive freedom in switching and joining groups erodes the principle of membership in the same party.

Responding to the question of when one may switch groups, we see that such switches occur more often towards the end of a term, and the party parliamentary group that becomes the recipient of the switches is the one is believed to

have the greatest chance of winning the next election. The party parliamentary groups also make an effort to recruit individuals that have a good chance of winning individual constituencies. (In 1990-1994, for instance, six Members of Parliament switched groups twice as elections approached.) I agree with the idea of establishing stricter time restrictions on the freedom to switch groups and that an MP who leaves a group in the final year of a term should have to remain an independent until the end of that term.[59] I would leave the question of which group an MP can switch to open, but I do ask whether an MP who resigns from a government party parliamentary group can join another group at will if accepted, such as an opposition party's group, or vice versa. Is this freedom all right under public law, considering the will expressed on election day?

12. We cannot deny the existence of independents

It is clear from the table that by the end of its term, there are a significant number of independents in Parliament (in the four terms of Parliament to date, the number of independents at the end of the term of office was 28, 23, 20, and 12). These data do not give us a full picture of the real number of independent MPs since independence is a temporary status that lasts for a longer or shorter interval. For instance, between 1994 and 1998 a total of 37 MPs were independent at one time or another. There is no denying that independence in a multi-party Parliament is an atypical though existing form of parliamentary practice. We immediately have to add that members of political parties may also choose to sit among the independents. For instance, towards the end of the 1994-1998 term of office there were ten parties in Parliament who professed to be represented by at least one independent MP. A good point to remember is that independent MPs are also independent of one another.

So then, do we have to protect parliamentary democracy from the independents or the independents against discrimination and parliamentary law practices that treat them in an antidemocratic manner? The latter may be the protection that is important and relevant from the aspect of constitutional law.

Act XXXIV of 1989 on the election of Members of Parliament sets up 176 individual constituencies, which makes it possible under public law for independents to win mandates, something that is true even if they do not have too much chance of winning. The principle of the freedom of mandates, despite its limitations, makes it possible for MPs to be independent, so parliamentary law recognizes the independent status of MPs. In subsection 6 of this paper above I mentioned that there were two extreme models in connection with independents. One recognizes the idea of making up a parliamentary group of independents (for instance, Greek, Irish, and Spanish parliamentary law do so) while the

other denies independents the right to participate in groups (the Netherlands, for instance). There are numerous configurations between the two, ones that often guarantee group rights.[60]

Effective Hungarian regulations tend to offer a mixed solution closer to the model which rejects independents, and for that reason it should be sharply criticized. Although the Standing Orders recognize independence, it does not really give independents any rights, sometimes including individual rights. (For instance, Standing Orders Article 53 (3) (d); Article 59; Article 101 (3) and Article 115 (3).) Standing Orders Article 115 (3) is a good example of the spirit of the regulations: "The House Committee shall provide independent Members of Parliament with the opportunity to put direct issues to cabinet members and raise questions in keeping with their numbers." Considering the fact that the right to ask questions is the constitutional right of every single Member of Parliament, this regulation in the Standing Orders cannot be called a constitutional solution that guarantees the equality of MPs. Having studied the history of raising direct issues with cabinet members, to my knowledge such issues must be responded to in the order in which they are registered in the issue ledger. The right to raise issues with cabinet members is not a right linked to party group membership. According to Standing Orders Article 18 (2), independent MPs may join with one another and establish a group, should they wish to do so. However, this group, similarly to professional, regional, and other groups, does not qualify as a party parliamentary group and therefore, it does not have the same rights. I believe that a group of independents is more like a quasi party group and differs fundamentally from all other types of group from the point of view of participatory rights. For this reason, the spokesperson for a group of independents that corresponds to a party parliamentary group in number should be granted a legal status similar to (not identical to!) that of the head of a party parliamentary group in the various institutions (for instance, in the House Committee, in addressing Parliament before beginning debate on the agenda, in reviving legislative initiatives, etc.).

The issue of equality under the law and of legal status must be separated from the issue of whether independents may establish parliamentary groups equivalent in legal status to the party parliamentary groups. I believe that they do not have this right. Parliamentary law has to solve the issues of legal status and the equality of participation independently of parliamentary group formation. At present the independents are a disadvantaged group from the point of view of both their individual and their group rights, and are treated as though they didn't even exist in parliamentary law.[61] The Constitutional Court ruling already cited several times, which concluded that Hungarian Standing Orders need to provide guarantees for the independents, calls attention to this unconstitutional situation. According to Subsection 3 of the executive portion of the

ruling "There is an unconstitutionality of omission insofar as the Standing Orders do not contain any stipulation guaranteeing that Members of Parliament who do not belong to any parliamentary group may actually become members of Parliament's standing and ad hoc committees, and in particular it does not regulate the right to participate extended to all Members and to distribute places in a proportionate manner. The Constitutional Court calls on the Parliament to meet this legislative obligation by September 1, 1998." The grounds given for the ruling state that regulations that consider only the interests related to the operations of party parliamentary groups and which essentially deny Members who are outside these parliamentary groups the authorities needed to perform their work are not constitutional. "It is derived from the equal rights of Members of Parliament that every single Member must be assured the opportunity to voice an opinion at the plenary sessions of Parliament, to participate as a Member in full standing in the work of the parliamentary committees, and finally, to form a group.[62] Although the deadline for correcting this anomaly was September 1, 1998, it continues to exist to this day.

The third level of legislative sources, the parliamentary group rules, has not been investigated in this study.[63] The content of these norms is akin to that of the Standing Orders, and in my view they are closer to parliamentary law than to political norms. The argument against this, that the rules of party parliamentary groups "do not have independent legal authority (for Member of Parliament independence precludes them from having such) is valid." [64] At the same time, with the concept of the constitutionality of the party parliamentary groups as our point of departure it is also true that a constitutional institution, the work order of Parliament, comprises the rules. Standing Orders serving as authorization are not inconceivable with respect to the party parliamentary groups – which is natural for the committees regulated in detail by parliamentary law (see Standing Orders Article 81 (1) – under which the party parliamentary groups establish their orders of procedure on the basis of the provisions of the Standing Orders. This authorization brings the party parliamentary group rules closer to the Standing Orders. The principle that party parliamentary group rules must be public has also to be declared.

* * *

In summing up the regulatory situation, we can say that following the constitutional regime change, Hungary is evolving a modern parliamentary law and law of parliamentary groups which is quite similar to that of European parliamentary democracies in its make-up. At the same time, there are numerous gaps in the law and contradictions of regulation and interpretation about which *de lege ferenda* decisions should be taken with a two-thirds majority, with particular respect to constitutional omissions.

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[4] Pikler, Kornél (Ed) (1971) *Házszabályok* (Standing Orders) Hungarian Academy of Sciences Institute of State and Legal Sciences. Budapest, pp. 29-44.

[5] Szente, Zoltán (1998) *Bevezetés a parlamenti jogba* (Introduction to parliamentary law) Atlantisz, Budapest, p. 21.

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[8] Dezső, Márta – Kukorelli, István – Sári, János – Somogyvári, István (2000) "A magyar parlamenti jog – *de lege ferenda*" (Hungarian parliamentary law – *de lege ferenda*), endnote 7, in: Petrétei, József (Ed) *Memorial volume.*. pp. 37-65.

[9] See Constitutional Court ruling 27/1998. (16 June), Constitutional Court Records 1998, pp. 197-210.

[10] *Parliaments, a comparative study on the structure and functioning of representative institutions in forty-one countries*, (1962) Published for the Inter-Parliamentary Union by Cassell and Company LTD, London, p. 85.

[11] Pikler, Kornél: Op. cit. p. 37.

[12] Pap, András László (1999) "Képviselői csoportjogok avagy a képviselőcsoportok joga" (Group rights of Members of Parliament or the rights of parliamentary groups), *Parlamenti Levelek*, No.7, p. 37.

[13] Dezső, Márta: Op. cit. p. 94.

[14] Pikler, Kornél: Op. cit. p. 36.

[15] For Constitutions, see: Trócsányi, László – Badó, Attila (Eds)(2005) *Nemzeti alkotmányok az Európai Unióban* (National constitutions in the European Union) KJK-Kerszöv Budapest, and Article 180 of the Portuguese Constitution, p. 880.

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[17] 27/1998. (16 June) Constitutional Court ruling, Constitutional Court Records, 1998, p. 200.

[18] Sólyom, László (2004) *Pártok és érdekszervezetek az alkotmányban* (Parties and interest groups in the Constitution), Rejtjel, Budapest, p. 139.

[19] Dezső, Márta: Op. cit. p. 94.

[20] For instance, the Bulgarian, Romanian, Slovenian, Greek, and Portuguese constitutions all require prior consultations with the party parliamentary groups before forming and/or dissolving a government. See endnote 15.

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[25] 27/1998. (16 June) (1998) Constitutional Court Ruling, Constitutional Court Records, p. 202.

[26] Under Act XI of 1987 on Legislation, normative parliamentary resolutions qualify as miscellaneous tools of state management even though the constitutional power has authorized Parliament to adopt them in a concrete and specific decision (Jat [Legislation Act] Articles 46-48) This is the interpretation adopted by the Constitutional Court, too. "In the continuous practice of the Constitutional Court, the parliamentary resolution on Standing Orders may be the subject of ex post control of legality on the initiative of any person, as a miscellaneous legal tool of state management," (39/1996. (25 September) Constitutional Court ruling, Constitutional Court Records 134, 1996; 29/1997. (29 April) Constitutional Court ruling, Constitutional Court Records 122, 1997; 50/1997. (11 October) Constitutional Court ruling, Constitutional Court Records 327, 1997).

[27] For the history of Standing Orders, see Pesti, Sándor (2002) *Az újkori magyar parlament* (The contemporary Hungarian Parliament) Osiris, Budapest, pp. 103-194.

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[30] Pesti, Sándor: Op. cit. p. 97.

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[32] See 50/2003. (5 November) Constitutional Court ruling, Constitutional Court Records 2003, Vol. I, pp. 566-595.

[33] Bragyova, András: Op. cit. p. 135; Somogyvári, István: (1992) *Az Országgyűlés Házszabálya*, (Parliament's Standing Orders) in: Kurtán, Sándor-Sándor, Péter-Vass, László (Eds) *Magyarország Politikai Évkönyve* (Political Yearbook of Hungary) p. 136; Also see: Article 88 of the draft of the new Constitution, endnote 21, p. 1021.

[34] For sources on Standing Orders in Hungarian, see Kornél Pikler's quoted works and Pintér, Katalin (Ed) (1989) *Házszabályok az egyes európai országokban*, volumes I-II (Standing Orders in various European countries, I-II). Also see Házszabályok (Standing Orders) www.ogyk.hu/e-konyt.

[35] Pesti, Sándor: Op. cit. 293-297.

[36] See cited works by Kornél Pikler, Zoltán Szente, and András László Papp; also see Gáva, Krisztián (1998) "A frakciók joga" (Rights of parliamentary groups) *Parlamenti Levelek*, Feb. No. 4-5, pp. 91-96; The International Centre for Parliamentary Documentation of the Inter-Parliamentary Union (1989) *Parliaments of the World*, Comparative Reference Compendium, Facts on File Publications, New York.

[37] The first term of Parliament (1990-1994) was the golden age of parliamentary groups that were not party-based: there was a group of veterinarian MPs, a group of MPs from Szabolcs-Szatmár-Bereg County, a Family group of MPs, a circle of MPs focusing on historical events of 1956 and so on.

[38] 27/1998. (16 June) Constitutional Court ruling, Constitutional Court Records 1998, p. 209.

[39] See endnote 10 and p. 83. in the same citation.

[40] According to ruling 29/1998-2002 by Parliament's Procedural Committee, the two-person Member of Parliament group of the Hungarian Unity Party, reported to the Speaker of Parliament as established on November 1999, does not comply with Standing Orders. 45/1998-2002 is another similar Procedural Committee position, taken regarding the founding of the Alliance for East Hungary Party on 12 April 2000. (The positions can be found in: *Compendium on the generally valid and one-of-a-kind positions taken by Parliament's Constitutional and Justice Committee and its Procedural Committee on the interpretation of Standing Orders*. (Compiled by Imre Seereiner and Maria Varga Hazi, 2005) This interpretation conforms to the section of Constitutional Court ruling 27/1998. (16 June) stating that Parliament does not have a constitutional obligation to offer reports of MPs organized on the basis of party policy similar rights to those granted to parliamentary groups. This conclusion is clearly for groups of MPs that are smaller than the threshold required to form parliamentary groups.

[41] For instance, on 8 October 1997 a group of newly independent Members of Parliament declared themselves to be a Group of Christian Democrat MPs. A similar precedent was followed after a number of MPs who resigned or were expelled from the MDF party when they set up a group called National Forum under Standing Orders Article 18 (1). See *Parliamentary Proceedings*, 22 November 2004, p. 29,013.

[42] See position 36/2002-2006 of the Procedural Committee based on the general position 67/1998-2002 of the Procedural Committee to the effect that the Speaker does not have the authority to determine whether an expulsion procedure was in conformity with the Standing Orders, not even if there are serious doubts about it.

[43] The table was prepared using data compiled by the Office of Parliament (the General Secretariat). The parliamentary groups of the parties in government have been underlined. The ratios of government parties to opposition ones, projected to the convening session and rounded out, were as follows for the various terms: 1990-1994: 60-40%, 1994-1998: 72-28%, 1998-2002: 55-45%, 2002-2006: 51-49%.

[44] For instance, on 27 September 1993, 13 MPs announced that they were forming a parliamentary group in the name of MPs from the FKgP and the Piac Parties. See: document OE/3638/1993 and endnote 40.

[45] The position taken by the Constitutional and Justice and the Procedural Committees, and on that basis, by the House Committee, was that there was no obstacle to the establishment of the parliamentary group in the Standing Orders. See document OE/3438/1993 and *Parliamentary Proceedings*, p. 28,136.

[46] See document OE/349/1996; position taken by the Constitutional and Justice Committee H/2210. The full House confirmed the one-time position at its session of 3/19/1996

[47] Szente, Zoltán: Op. cit. p. 136.

[48] 27/1998. (16 June) Constitutional Court ruling, Constitutional Court Records, 1998, p. 201.

[49] A Constitutional-Preparatory Committee operated in Parliament from 1995 to 1998, and its members consisted of four MPs from each party group. Under Standing Orders Article 134/F (6) "parliamentary group" was defined as a parliamentary group of a party which became a parliamentary group based on its results in the 1994 parliamentary elections. Therefore, the newly established MDNP was unable to participate in the committee.

[50] Act XXXIV of 1989 on the election of Members of Parliament, Article 46 (5) states that if an MP mandate is vacated, the party shall announce the name of the new MP – taken from the persons who were on the original electoral list – to the responsible elections committee within 30 days.

[51] According to Procedural Committee decision 13/1998-2002, the drop in the number of people in the MIÉP parliamentary group did not affect the continuation of the group. In the latter half of the 2002-2006 parliamentary term, the MDF parliamentary group maintained operations with eight persons. See: Procedural Committee positions 36/2002-2006 and 41/2002-2006.

[52] In accordance with Standing Orders Article 17 (2), parliamentary group leader Tamás Isépy sent a letter to the Speaker dated 25 June 1997, reporting termination of the group.

[53] See: Position of Constitution and Justice Committee, 17 September 1997 (ATB/298-1/1997), Parliament rejected a petition calling for it to reject this interpretation at a meeting on 30 September 1997. Document Ü/2930.

[54] On 19 November 1991, 12 members of the FKgP party's parliamentary group announced that under a party decision they were to be the party's representatives.

[55] Joint position of the Constitutional and Justice Committee and the Procedural Committee 3/1990-94. (1992, 20 February). The nine FKgP MPs continued their activity as independents outside of the party group. As of 21 March 1994, 21 members of the 36 member party regrouped themselves into the EKgP Party.

[56] Kukorelli, István (1995) "A parlament négy éve" (Four years of Parliament) in: *Alkotmányozás évtizede* (The Constitution-shaping decade), Korona, Budapest, pp. 115-136; Kukorelli, I. (1997) "Az 1994/98-as országgyűlési ciklus – a kétharmados parlament" (The 1994/1998 term of Parliament – the two-thirds Parliament), *Magyar Közigazgatás*, No 7, pp. 353-360; Kukorelli, I. (1992) "Változások a parlamenti ülésrendben," (Changes in Parliament's seating order) in: *Magyarország Politikai Évkönyve* (Hungary's Political Yearbook) pp. 63-67; Szarvas, László (1993) "Parlamenti pártfrakciók – módosuló struktúrák?" (Party parliamentary groups – changing structures?) in: *Magyarország Politikai Évkönyve*, pp. 131-139; Szarvas, L (1996) "Parlamenti pártfrakciók – 1996," (Party parliamentary groups) in: *Magyarország Politikai Évkönyve*, pp. 101-108; Szarvas, L. (1997) "Sok mozgás közben, helyben járás – pártfrakciók 97" (Marking time while moving extensively) *Magyarország Politikai Évkönyve*, pp. 189-198; Szarvas, L. (no date): "Parlamenti képviselők – pártfunkciók, 1988-1998" (Members of Parliament – party functions, 1988-1998), *Magyarország Politikai Évtizedkönyve*, (*A decade of Hungarian politics*) Vol. I, pp. 325-333; Szarvas, L. (2001) "Pártfrakciók 2001 – mozdulatlanság és következetlen káosz (Party parliamentary groups 2001 – paralysis and inconsistent chaos), in: *Magyarország Politikai Évkönyve*, Vol. I. pp. 299-307; Szarvas, L. (2002). "Parlament – pártfrakciók 2002-ben" (Parliament and party parliamentary groups in 2002) in: *Magyarország Politikai Évkönyve*, Vol I, p. 257-263; Tóth, István János (1992) "Képviselők és frakciók a parlamentben" (Members of Parliament and party groups in Parliament) in: *Magyarország Politikai Évkönyve*, pp. 81-91.

[57] Kukorelli, István (1995) "Kié a képviselő?" (Who owns the MP?) in: *Az alkotmányozás évtizede* (The Constitution-shaping decade), Korona, Budapest, pp. 194-196.

[58] For instance, during the 1990-1994 parliamentary term, 50 MPs switched to another group and during the 1994-1998 term 67 MPs did the same.

[59] Dezső, Márta. Op. cit. p. 101.

[60] Gárdos, Péter (1999) "A független képviselők helyzete Magyarországon – Gondolatok egy működésképtelen bizottság munkájáról," (The status of independent MPs in Hungary – thoughts concerning the operation of an unviable committee) *Parlamenti Levelek*, September, No. 7, p. 31-34. Also see *Parliaments of the World*, cited in endnote 36.

[61] Kukorelli, István (1995) Függetlenek (Independents), in: *Az alkotmányozás évtizede* (The Constitution-shaping decade), Korona, Budapest, pp. 197-198

[62] Constitutional Court ruling 27/1998. (16 June), p. 197.

[63] Smuk, Péter (2005) "A frakciófegyelem szabályai a parlamenti jogban" (The rules of party parliamentary group discipline in Parliamentary law), *Magyar Közigazgatás*, No. 3, pp. 148-165.

[64] Szente, Zoltán: Op. cit. p. 139. in: *Formatori iuris publici*, (2006) *Ceremonious volume marking the 70th birthday of Professor Géza Kilényi*. Eds: Hajas, Barnabás, Schanda, Balázs. Budapest, pp. 259-280.

SUMMARY

Party Groups in Hungarian Parliamentary Law

ISTVÁN KUKORELLI

The essay introduces the present state of Hungarian parliamentary law with a focus on the law of parliamentary groups of Members of Parliament against the background of the Constitution, the Standing Orders and parliamentary custom. The author reveals loopholes and inner inconsistencies in relevant regulations.

The parliamentary groups of MPs are constitutional institutions and not party organs, the author states. To confirm his point, he refers to the history of those groups, relevant provisions in the Constitution and resolutions of the Constitutional Court. In fact, he defines parliamentary groups as fundamental building blocks of modern multi-party parliaments.

The Hungarian Standing Orders deal with parliamentary groups under two main headings: the norms of the organization of parliamentary groups (their formation, termination, the exclusion of members, etc.) and the enumeration of the rights that parliamentary groups may exercise. Modern Standing Orders tend to lay emphasis on parliamentary group rights rather than the rights of individual Members of Parliament, and they include safeguards for the rights of the Opposition.

The second part of the essay addresses four issues on the basis of parliamentary case law. They are as follows: the opportunity to form a parliamentary group in the course of parliamentary periods (as opposed to doing so at the beginning of such a period), the termination of parliamentary groups, changes in the seating order of MPs (as a result of MPs leaving a parliamentary group to join another one) and, finally, the case of cross-benchers. On the basis of *de lege ferenda*, the author makes numerous recommendations for the legislator, who in several questions has brought about unconstitutionality in this field by failing to fulfil its legislative tasks.

RESÜMEE

Fraktionen im ungarischen parlamentarischen Recht

ISTVÁN KUKORELLI

Die Studie stellt die derzeitige Situation des ungarischen parlamentarischen Rechts, genauer die Regelung des Fraktionsrechts vor. Dabei nimmt sie auf die Verfassung, die Hausordnung und das parlamentarische Gewohnheitsrecht Bezug, und weist auch auf die Gesetzeslücken, sowie die Widersprüche bezüglich der Regelung und Interpretation hin.

Der Meinung des Verfassers zufolge sei die Fraktion eine verfassungsmäßige Institution und kein Parteiorgan – dies folge aus der historischen Entwicklung, dem Erscheinen der Vorschriften auf Verfassungsebene und aus den Interpretationen des Verfassungsgerichts. Die Fraktion sei – so der Verfasser – die Grundlage des auf dem Parteipluralismus basierenden modernen Parlaments.

In den Hausordnungen können hinsichtlich der Fraktionen zwei große Regelungsbereiche angeführt werden: einerseits die mit der Organisation der Fraktionen (Bildung, Auflösung, Ausschluss usw.) zusammenhängenden Normen, andererseits der Katalog der Fraktionsrechte. Die modernen Hausordnungen bauen anstelle der individuellen Abgeordnetenrechte immer mehr auf die Fraktionsrechte und wahren zudem auch die Rechte der Opposition.

Der zweite Teil der Studie beschäftigt sich auf Grund des parlamentarischen Fallrechts mit vier Fragen: mit der Möglichkeit der Fraktionsbildung während der Parlamentsperiode, der Auflösung der Fraktionen, den Änderungen der parlamentarischen Sitzordnung (Austritte, Platzwechsel usw.), schließlich mit der Angelegenheit der Unabhängigen. Der Verfasser formuliert auf Grund des Fallrechts de lege ferenda zahlreiche Vorschläge für den Gesetzgeber, der hinsichtlich mehrerer Fragen wegen Versäumnis der Rechtssetzung Verfassungswidrigkeit herbeigeführt hat.